

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:12-cr-007

- vs -

District Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

AARON ZANDER,

Defendant.

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**ORDER WITHDRAWING REPORT AND RECOMMENDATIONS**

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This 28 U.S.C. § 2255 proceeding is before the Court on Defendant's Withdrawal of the § 2255 Motion (ECF No. 50). The effect of that withdrawal is to voluntarily dismiss the § 2255 Motion without prejudice. Fed. R. Civ. P. 41 permits the voluntary dismissal of an action without prejudice at any time before the opposing party has filed an answer or a motion for summary judgment.

Although the Court ordered the Government to answer the Motion, the case was stayed pending a decision of *Beckles v. United States*, 2017 U.S. LEXIS 1572 (March 6, 2017). After that decision was handed down, the Magistrate Judge vacated the stay and recommended

dismissal of the case with prejudice. However, nothing in Fed. R. Civ. P. 41 as applied to this case prevents a voluntary dismissal here.<sup>1</sup>

Accordingly, the Court finds Defendant's Withdrawal of the Motion is effective to dismiss the § 2255 case without prejudice. The Report and Recommendations (ECF No. 188) recommending dismissal with prejudice is WITHDRAWN. The portion of that same filing that vacates the stay remains in effect.

March 17, 2017.

s/ *Michael R. Merz*  
United States Magistrate Judge

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<sup>1</sup> There might be situations, not present here, where filing a voluntary dismissal was a tool for judge shopping. Given the decision in *Beckles*, it is unlikely any such motivation is present here.